

6-24-2008

Rammell v. Idaho State Dept. of Agriculture Appellant's Reply Brief Dckt. 34927

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Rammell v. Idaho State Dept. of Agriculture Appellant's Reply Brief Dckt. 34927" (2008). *Idaho Supreme Court Records & Briefs*. 1785.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/1785

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

REX RAMMELL and LYNDA
RAMMELL, d/b/a ELK COUNTRY
TROPHY BULLS,

Appellants,

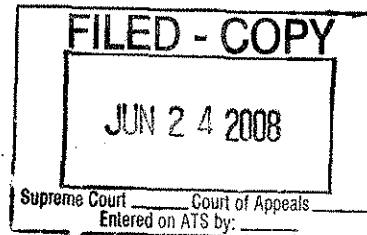
-VS-

IDAHO STATE DEPARTMENT OF
AGRICULTURE,

Respondent.

Supreme Court No. 34927

APPELLANTS' REPLY BRIEF



APPELLANTS' BRIEF

John L. Runft ISB # 1059
Karl J. Runft, ISB # 6640
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste 400
Boise, Idaho 83702
Telephone: (208) 333-8506
Facsimile: (208) 343-3246
Email: kjrunft@runftlaw.com
Attorney for Appellants

Steven W. Strack, ISB # 3906
Attorney General's Office
Deputy Attorney General
PO Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8072
Attorney for Respondents

TABLE OF AUTHORITIES

CASES

<i>Kirkman v. Stoker</i> , 134 Idaho 541, 544, 6 P.3d 397, 400 (2000).....	1
<i>Levin v. Idaho State Bd. Of Medicine</i> , 133 Idaho 413, 417, 987 P.2d 1028, 1032 (1999).....	1
<i>Lamar Corp. v. City of Twin Falls</i> , 133 Idaho 36, 39, 981 P.2d 1146, 1149 (1999).....	2
<i>JR. Simplot Co. v. Tax Com'n.</i> , 120 Idaho 849, 820 P.2d 1206 (1991).....	2

STATUTES

I.C. § 25-3708.....	1, 3
I.C. § 25-3701.....	3
I.C. § 25-223.....	3
I.C. § 25-228.....	3
I.C. § 25-3708.....	1, 3

I.

INTRODUCTION

The Respondent filed its Response Brief on June 13, 2008. The Appellants hereby reply.

II.

APPELLANTS' CHALLENGES TO THE RULES AND STATUTE ARE PROPERLY
BEFORE THE COURT

The Respondent the Idaho Department of Agriculture (the "Department") intimates that the Appellants' challenge to certain Department's rules governing cervidae and challenge to the constitutionality of I.C. § 25-3708 are not properly before this Court.

This Court has said it does not consider issues raised for the first time on appeal. *Kirkman v. Stoker*, 134 Idaho 541, 544, 6 P.3d 397, 400 (2000). The Appellants are not raising these issues for the first time on appeal. The challenge to the validity of the certain Department rules and the constitutional challenge to I.C. § 25-3708 were all raised in the Appellants' Amended Answer. *See* Exhibit 6, Agency Record, document No. 6. Further, where a district court acts in its appellate capacity pursuant to the Idaho Administrative Procedure Act (IDAPA), this Court reviews the agency record independently of the district court's decision. *Levin v. Idaho State Bd. of Medicine*, 133 Idaho 413, 417, 987 P.2d 1028, 1032 (1999); *Lamar Corp. v. City of Twin Falls*, 133 Idaho 36, 39, 981 P.2d 1146, 1149 (1999). So the fact that Appellants did not argue these issues before the district court is irrelevant. Appellants chose to reserve these arguments for the final arbiter of these issues, and they are properly before this Court.

III.

THE DEPARTMENT CITES THE WRONG STANDARD FOR DETERMINING IF A RULE IS REASONABLE OR NOT

On page 23 of the Department's Brief, the Department cites a California case regarding the standard for determining whether an administrative rule is unreasonable. The correct standard in Idaho is set forth in *J.R. Simplot Co. v. Tax Com'n*, 120 Idaho 849, 820 P.2d 1206 (1991)(the agency's statutory construction must be reasonable).

IV.

THE ADMINISTRATIVE HEARING WAS NOT RULE MAKING

In defense of its position that the Hearing Officer properly did not allow Appellants to develop a factual record, the Department engages in a lengthy discussion on pages 20 through 22 of its Brief regarding how agencies, like the legislature, are not required to enter into detailed fact finding proceedings when making rules or laws. While this may be correct, that general proposition of administrative law is irrelevant to this case. The Administrative Hearing was not rule making but a contested case. The Appellants' main defense was that the rules under which he was charged were unreasonable. The Appellant contends that certain facts needed to be presented to demonstrate the unreasonableness of the rules in question. *J.R. Simplot Co. v. Tax Com'n*, 120 Idaho 849, 820 P.2d 1206 (1991), makes clear that whether an administrative rule or interpretation of a statute meets the requirements for judicial deference is a mixed question of law and fact. This was a case of judicial review of rules not rule creation, and different standards and evidentiary requirements come into play. Depriving Appellants of their ability to defend

themselves by showing the Department's rules to be unreasonable was a violation of their due process rights.

V.

I.C. § 25-3708 IS A SPECIAL TAX

The Department has asserted in its Brief that the tax set forth in I.C. § 25-3708 is not a special tax under Article III, Section 19 of the Idaho Constitution because there is an obvious distinction between cervidae and other livestock to substantiate a unique tax on cervidae ranching. Whether there is an obvious distinction or not is irrelevant, the fact is the Idaho Legislature has stated there is no distinction. I.C. § 25-3701 makes it clear that:

For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing, harvesting or marketing of such animals or their products by the producer or his agent shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, cervidae farmers, cervidae breeders or cervidae ranchers; the premises within which such pursuit is conducted shall be deemed farms, cervidae farms, or cervidae ranches.

The Department is now attempting after the fact to reclassify cervidae ranching as a special subset of ranching or agricultural pursuit despite the clear legislative language. Indeed, this fee is unique to cervidae ranching. No other agriculture pursuit has such an unconditional tax per-head even despite that fact other such pursuits do present unique issues of control and management. Chapter 1 of Title 25 is dedicated to the control of sheep diseases, yet there is no special fee related to sheep. I.C. § 25-223 through I.C. § 25-228 deal with particular issues related to swine, yet, again, there is no set fee. Title 25 is replete with other examples proving

the point that cervidae ranchers are discriminated against despite being classified as equal to all other livestock. I.C. § 25-3708 is a special tax and should be ruled unconstitutional.

VI.

CONCLUSION

The Appellants sought to challenge the rules at issue but were prevented from obtaining a competent Hearing Officer and prevented from introducing relevant and crucial evidence in their defense. Appellants ask that the administrative case against them be dismissed without further action. In the alternative, Appellants asks that the case be remanded so that they may mount a challenge to the validity of the relevant rules.

DATED this 24th day of June 2008.

RUNFT & STEELE LAW OFFICES, PLLC

By: 

KARL J.F. RUNFT

Attorney for Rex and Lynda Rammell

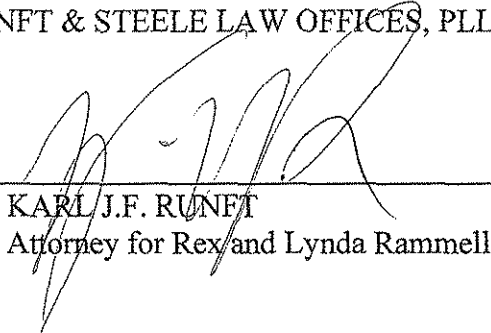
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of June 2008, a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF**, was served upon opposing counsel as follows:

Steven W. Strack
Attorney General's Office
Deputy Attorney General
PO Box 83720
Boise, ID 83720-0010

☒ US Mail
☐ Personal Delivery
☐ Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By: 
KARL J.F. RUNFT
Attorney for Rex and Lynda Rammell